Paper 1: ASEAN's Role in The Management of Forced Migration: Current Activities and Future Potential

Southeast Asia is a dynamic region with high rates of economic and labour migration, diaspora populations, forced migration, internal displacement, refugee and trafficked populations. These migrations involve movements within and between countries in the region, as well as movements into and out of the region. Issues of international migration by definition cannot be managed unilaterally, and thus necessitate the use of regional frameworks and forums, such as the ten-member Association of Southeast Asian Nations (ASEAN).

This year ASEAN is being chaired by Indonesia, under the slogan: *"ASEAN: Epicentrum of Growth"*. Growth is understandably a major focus for countries in the wake of the COVID-19 pandemic. Migration contributes to national and regional growth through contributing to labour markets and building and strengthening communities. Well understood and managed migration pathways also contribute to national and regional security, by obviating the need for alternative, less safe pathways or facilitation by third parties.

ASEAN Member States are all affected by forced migration, to varying degrees. In 2015 the Andaman Sea crisis, during which 8,000 refugees and migrants became stranded when smugglers abandoned their vessels at sea, exemplified the lack of responsibility sharing within ASEAN, as well as the lack of coordinated responses to forced migration.[1] Malaysia, Thailand and Indonesia are most often directly affected by forced displacements, particularly but not exclusively from Myanmar. Although the three countries often deal with 'regular spontaneous' movements both by land and sea, they lack a long-term policy or agreed measures to address the issues, instead dealing with forced migration in an ad hoc and sporadic manner.

That said, ASEAN does have a number of important agreements and declarations related to migration. These include:

Migrant worker protection and management	● 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers and related ASEAN Committee on Migrant Workers ● ASEAN Forum on Migrant Labour ● 2018 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers ● 2022 ASEAN Declaration on Portability of Social Security Benefits for Migrant Workers in ASEAN ● 2020 ASEAN Guidelines on Effective Return and Reintegration of Migrant Workers ● *Draft* Instrument on Migrant Workers Rights
Irregular migration	● 2015 Kuala Lumpur Declaration on Irregular Movement of Persons in Southeast Asia

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[1] McLeod, T, Hughes, P, Petcharamesree, S, Wong, S, Pudjiastuti, T. 2016. 'The Andaman Sea refugee crisis a year onn: what happened and how did the region respond?' *The Conversation,* 26 May, https://theconversation.com/the-andaman-sea-refugee-crisis-a-year-on-what-happened-and-how-did-the-region-respond-59686

	● Regular meetings of ASEAN Directors General of Immigration and Heads of Consular Divisions of Foreign Ministries
Forced migration, particularly trafficking in persons	● 2015 ASEAN Convention Against Trafficking in Persons, Especially Women and Children and related Bohol Work Plan 1.0 and 2.0 ● 2019 ASEAN Declaration on the Rights of Children in the Context of Migration and related Regional Plan of Action.
Other relevant declarations and agreements	● 2012 ASEAN Human Rights Declaration ● 2012 Declaration on the Elimination of Violence Against Women in the ASEAN Region ● 2013 ASEAN Declaration on Strengthening Social Protection ● At least 9 agreements on "free" movement of highly-skilled workers within ASEAN ● 2021 ASEAN Guidelines on Disaster Responsive Social Protection to Increase Resilience

Further, all ten ASEAN states support the Global Compact on Refugees, and eight of the ten support the Global Compact on Migration.[2] All ASEAN states have also adopted the Convention on the Rights of the Child.

The recently agreed Regional Plan of Action for the ASEAN Declaration on the Rights of Children in the Context of Migration which recognises that "international and domestic migration and displacement are not new phenomena. They affect every country in the ASEAN region" and contains indicators around prohibiting immigration detention of children (1.2.3) and developing alternatives to detention (1.2.4) and allowing access to education for all children (2.2.1).[3]

ASEAN and its relationship with migration

In his forward written for the first edition of ASEAN Migration Outlook published in 2022, Dato Lim Jock Hoi, then Secretary General of ASEAN stated, "the safe and orderly migration of workers within and beyond the region is a key component of realising an ASEAN Community that is politically cohesive, economically integrated, and socially responsible".[4] The report's focus on labour migration and the problem of "effective implementation of the return and reintegration mechanisms" indicates that ASEAN does not fully recognise the complexity of the nature of migration in the region, and the fact that countries are increasingly having to deal with mixed migration flows. This is due to complex factors ranging from poverty, economic and social disparities, persecution and exclusion, on-going human rights violations and environmental degradation and climate change.

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[2] Andrew & Renata Kaldor Centre for International Refugee Law (2019) The Global Compacts on Refugees and Migration Factsheet; GCM votes countries listed here: https://digitallibrary.un.org/record/1656414?ln=es (Singapore abstained and Brunei Darussalam did not vote).

[3] Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration,

[4] ASEAN Secretariat 2022, ASEAN Migration Outlook, July: Jakarta.

Andrew Geddes described regional migration policy in Southeast Asia to be "strongly influenced by representations of its temporariness, which shape responses to labour migration and to forced displacement. The idea that migrant workers are temporary and that forcibly displaced people require temporary protection in the region and resettlement outside it has become embedded within repertoires of migration governance in Southeast Asia that shape what governing actors know how to do and also what they think they should be doing."[5]

This reflection is prescient as we consider a number of cross-border challenges that will only be effectively dealt with as a region, for example:

Online scams: During the past months, Southeast Asia has been in the headlines regarding online scams and human trafficking and different forms of exploitation, including forced labour and forced criminality.[6] Countries in Southeast Asia such as Cambodia, Indonesia, Malaysia, Thailand and Vietnam have all been affected by criminal networks preying on people via cyberspace. With unprecedented digital connection, no country and no individual is immune from such crimes and human rights violations. There is a risk that as operations move to Myanmar, it will become more difficult for authorities to intervene.[7] Any effective response cannot be limited to one country alone, however to date that is how most responses appear to have been handled, despite existing regional frameworks like ACTIP. The sudden surge in such cases during the pandemic and corresponding media attention, demonstrate vulnerabilities in the system and could be an opportunity for ASEAN to come together and address them.

Climate change: In addition, climate change and environmental degradation are quickly becoming another major cause of displacement. According to the 2022 Global Report of Internal Displacements by the Geneva-based Internal Displacement Monitoring Centre, there were 38 million individual instances of displacement in 2021 globally, with 14.3 million (37.6%) coming from the East Asia and Pacific region. The Southeast Asian countries, namely the Philippines (5,681,000), Indonesia (749,000), Vietnam (780,000) and Myanmar (158,000) recorded the highest incidence of displacements due to natural disasters in 2021. Floods and storms were responsible for over 80% of disaster related displacement.[8] Not only is Southeast Asia known as a 'hot spot' for acute severe weather events, it is also vulnerable to the effects of more chronic environmental degradation as well as being affected by sea level rise. The World Bank report suggested that the lower Mekong subregion is projected to see between 3.3 million and 6.3 million new climate migrants between now and 2050 (1.4% to 2.7% of the country population) depending on different scenarios.[9]

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[5] Geddes, A. 2021. Southeast Asia : The 'Temporaryness' of Migration, in Andrew Geddes, Governing Migration Beyond the State: Europe, North America, South America, and Southeast Asia in a Global Context (2021), Oxford University Press, pp. 55-84.

[6] Wong, T, Thu, B, Lee, L. 2022. 'Cambodia scams: Lured and trapped into slavery in South East Asia' *BBC News,* https://www.bbc.com/news/world-asia-62792875; Mazoe Ford & Supattra Vimonsuknopparat, 2022, 'Inside the call centre scam that lured vulnerable workers to Cambodia' *ABC News,* https://www.abc.net.au/news/2022-12-29/inside-call-centre-scams-in-cambodia-torture-fear-and-survival/101770352

[7] Hunt, L. 2023. 'Focus on human trafficking shifts from Cambodia to Myanmar' *The Diplomat,* https://thediplomat.com/2023/02/focus-on-human-trafficking-shifts-from-cambodia-to-myanmar/

[8] Kwan Soo-Chen and David McCoy, Climate displacement & migration in South East Asia, Inter Press Service, 28 February 2023, https://reliefweb.int/report/viet-nam/climate-displacement-migration-south-east-asia.

[9] Ibid.

To date ASEAN has tended to be more reactive than proactive on migration issues; focusing on controlling and regulating rather than prevention and protection. The region could benefit from a more coherent and coordinated migration agenda, and explicitly the development of a framework that can anticipate, mitigate and manage both sudden movements and on-going mixed migration flows. This would ensure that resources, policies, and strategies comprehensively and effectively address both existing and new migration trends. It could also benefit from the creation of a dedicated pooled fund.

What currently prevents ASEAN from building a framework on forced migration?

ASEAN policies are conditioned by norms around state sovereignty demanding for consensus and non-interference principles that have been used to shape migration responses of ASEAN so far. The complexity and 'absoluteness' of politics of sovereignty has to date prevented ASEAN from imagining a comprehensive and unified regional forced migration governance framework. This has been particularly challenging since countries of origin of forced migrants, refugees and asylum seekers in particular joined ASEAN.

This is further compounded by the disproportionate impacts of forced migration on some Member States, and lower levels of political will from states not as affected. To date, only two of the ten member states (Cambodia and the Philippines) are party to 1951 Convention relating to the status of refugees, and neither of them is considered a major resettlement or destination country. Thus countries in ASEAN largely prefer a unilateral ad hoc response rather than regional response to forced migration, but in the long term this risks destabilising the region and pushing problems down the road.

What could a framework for forced migration governance look like?

Given the scale and impact of forced migration in Southeast Asia, it is incumbent for ASEAN to consider further options beyond pre-existing measures. Far reaching and bold proposals, while sometimes generating friction, can help to push the status quo, and lead to more ambitious and ultimately impactful policy decisions. This paper suggests three proposals for consideration.

First, that the leaders-led ASEAN Summit work toward a "Declaration on Forced Migration" along the lines of the ASEAN Human Rights Declaration. This declaration would draw on principles in the UN Global Compacts on Refugees and on Migration, and assert an ASEAN role in preventing, managing and resolving forced migration in the region.

Such a declaration is crucial to signal both to ASEAN and the wider region the severity of forced migration in the region, its root causes, and impacts to both victims and host communities. It would also not be out of place for ASEAN, given its consistency with the association's objective to "promote regional peace and stability through abiding respect for justice and the rule of law" and adherence to the principles of the United Nations Charter.

Second, with such a declaration in place, that ASEAN agrees to the establishment of an ASEAN Ministerial Council on Forced Migration or an Intergovernmental Commission on Forced Migration. This council or commission could potentially be composed of six relevant ministers from ASEAN member states. Three of those could be from the preceding, current, and incoming members of the rotating ASEAN Chair, which will help with continuity. The remaining three could be from interested states. A permanent secretariat would need to be established and funded to support the council or commission. Working groups to address specific aims and issues on forced migration, which report to the council or commission, should also be established.

Its core functions would be to provide leadership on priorities and pathways for addressing forced migration in the region. It would be important that the body was required to report regularly on its effectiveness, to ensure it is having a meaningful impact on people's lives. Specific initiatives could include:

● Regularly convening to review the status of long-standing, new and potential forced migration outbreaks in the region.
● Establishing an ASEAN monitoring and early warning system on forced migration and taking the lead in brokering quick responses to emergency displacement situations.
● Developing long-term strategies to prevent, mitigate and resolve forced migration in conjunction with affected governments (both ASEAN and non-ASEAN) and with the assistance of partner countries and international organisations as necessary.
● Promoting better conditions for forced migrants in host or destination countries, pending long-term solutions.
● Reporting to ASEAN annually on forced migration trends and challenges, and actions taken and their effectiveness.

Third, ASEAN and its member states should ensure that forced migration issues are part of the regular agenda for discussion in forums with external partners to ASEAN, especially its Dialogue Partners. ASEAN will need to drive this agenda and ensure that its partners know of the scale of the challenge that it faces. An early opportunity to champion this would be incorporating it into the agenda of the Special Summit to Commemorate the 50th Anniversary of ASEAN-Australia Dialogue Relations in 2024.

Conclusion

The three proposals above range from the very ambitious to the relatively achievable. All are consistent with the aims and aspirations agreed to in the Kuala Lumpur Declaration on Irregular Movement of Persons in Southeast Asia, in September 2015. In order to achieve progress towards the above proposals, we would ideally have an ASEAN member state champion, and it would also help to have a study examining the benefits of managing migration regionally, and the costs of not doing it as part of ASEAN's framework. Further, it will be essential for all key stakeholders – local and international organisations, Dialogue Partners, donors, and development partners – to engage ASEAN and its member states to build and sustain momentum for these additional measures. The upcoming Global Refugee Forum in December 2023 would be a good opportunity for some ASEAN Member States or Dialogue Partners to put forward this more ambitious agenda in the form of joint pledges.

Paper 2: Regional Responses to The Rohingya Displacement:
Latest Developments and Opportunities

Myanmar has long been the primary source of forced migration in Southeast Asia, even before the February 2021 coup. Periodic conflict since independence in 1948 has led to large Myanmar diaspora communities living throughout the region. The Rohingya ethnic minority has been particularly targeted during this time, and is recognised as one of the world's most persecuted groups.

Waves of targeted violence have led to repeated movements of Rohingya people from their homes in Rakhine State to Cox's Bazar, Bangladesh, and further afield to Malaysia, Thailand, India and the Middle East. The number of Rohingya living outside Myanmar now outnumbers those who remain. In Rakhine State around 147,000 Rohingya are confined to Internally Displaced Persons (IDP) camps,[10] and approximately 600,000 live mainly in the northern parts of the state, where they are subject to discrimination, segregation and corruption.

Widespread discrimination at both governmental and societal levels in Myanmar resulted in securitised population control and (im)migration policies and practices that prevent Rohingya migration from Rakhine State to other parts of Myanmar, let alone further afield to other countries. An unknown number of such migrants from 2012 until the present day have been arrested and jailed allegedly for attempting to exercise freedom of movement, and been subject to forced return back to Rakhine State.

The causes of the plight of the Rohingya within and outside Myanmar include targeted policies and practices of discrimination and persecution by successive Myanmar governments at least since the late 1970s; the text and arbitrary (mis)implementation of the 1982 Myanmar Citizenship Law and other citizenship and (im)migration related policies and practices that effectively render the Rohingya stateless or undocumented.[11] Additionally, there has been a marked rise of extreme Islamophobia (and specifically Rohingya-phobia) in Myanmar, linked to a rise in nativist supremacist politics that divides people of Myanmar into 'natives' and 'non-natives'. Explicit policies and practices of segregation between Rohingyas and Rakhines further add to this tension.[12]

Successive governments in transition failed to demonstrate necessary political will to resolve the Rohingya issue. Instead, their actions led to the unprecedented deterioration of the crisis. As Myanmar underwent liberalisation and democratic transition from 2011 onwards, many in both the Rohingya and the wider international community were expecting amelioration of the situation, only to bear witness to a Rohingya 'genocide' unfolding parallel to the democratic transition.

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[10] CCCM/Shelter/NFI Cluster Analysis Report (CAR) – Central Rakhine and Chin, Myanmar, October-December 2022.

[11] Kyaw, N. 2017 'Unpacking the presumed statelessness of Rohingyas' *Journal of Immigrant and Refugee Studies,* vol. 15, issue 3.

[12] Cheeseman, N. 2017 'How in Myanmar 'National Races' came to surpass citizenship and exclude Rohingya' *Journal of Contemporary Asia,* vol. 47, issue 3.

In August 2017, more than 9,000 people were killed and around 700,000 fled to Bangladesh in what the United Nations has called "a textbook example of ethnic cleansing."[13] Almost six years later, and Myanmar remains hostile towards the Rohingya, with civil war continuing since the February 2021 coup compounding instability. Since the coup, displacement has impacted a much broader group of the Myanmar population, with more than 1.4 million forcibly displaced within Myanmar due to heavy-handed repression of dissidence and resistance against the military rule.[14] Attacks by the military on civilian targets is regularly reported.

Bangladesh hosts the largest number of Rohingya outside of Myanmar, while also managing its own internal development challenges and vulnerability to climate change. Support from the international community has been waning over recent months, and in February 2023 the World Food Program announced it was reducing rations as a result of funding deficits.[15] This dramatically affects the health, wellbeing, security and morale of those living in the camps. Since the establishment of the camps on Bhasan Char, 28,000 Rohingya are known to have relocated there.[16]

The issue of safe, dignified, durable and voluntary repatriation of Rohingya back to Myanmar is fraught. An official agreement was reached between Bangladesh and Myanmar in November 2017 during the time of the National League for Democracy administration headed by Aung San Suu Kyi, however since then there has been a coup and civil war.[17] The current Myanmar military junta has made statements about a pilot scheme of repatriating more than 1,000 Rohingya refugees,[18] however there are serious concerns about the viability of safe, durable and voluntary repatriation given ongoing conflict and violence in Rakhine State and elsewhere in Myanmar, and lack of structural changes taking place in Myanmar to indicate the root causes of the 2017 violence have been addressed.[19] After an official visit of a Rohingya delegation from Cox's Bazar to the Myanmar military's proposed border camps on 5 May, the Rohingya group reportedly resulted in the At the time of writing, there are talks of a visit of Rohingya people from Cox's Bazar to the proposed border camps on 5 May.[20]

Two Types of Forced Migration

Two types of Rohingya forced migration are worth noting. The first one is fast-paced, mostly land-based forced migration of Rohingya refugees and asylum seekers. The most recent such example is that experienced in August 2017. While this instance is the largest in scale to date, it is not unprecedented. The first and second Rohingya exodus of 200,000-250,000 people each to Bangladesh

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[13] UN News. 2017. UN human rights chief points to 'textbook example of ethnic cleansing' in Myanmar, 11 September, link.

[14] OCHA, 2023, 'Myanmar Humanitarian Update No. 28' 6 April 2023.

[15] World Food Programme 2023 Lack of funds forced WFP to cut rations for Rohingya in Bangladesh, 17 February, https://www.wfp.org/news/lack-funds-forces-wfp-cut-rations-rohingya-bangladesh

[16] UNHCR, 'UNHCR's Grandi urges redoubled support for Rohingya refugees, host communities in Bangladesh,' 25 May 2022, https://www.unhcr.org/news/news-releases/unhcrs-grandi-urges-redoubled-support-rohingya-refugees-host-communities

[17] Holmes, O. 2017, 'Myanmar signs pact with Bangladesh over Rohingya repatriation' *The Guardian,* 24 November.

[18] Kamruzzaman 2022 'Myanmar agrees to take back Rohingya refugees: Bangladesh' *Andalou Agency,* 20 October https://www.aa.com.tr/en/asia-pacific/myanmar-agrees-to-take-back-rohingya-refugees-bangladesh/2716737

[19] APRRN 2022 'Its time to share responsibility: The rohingya crisis five years on' 25 August, Rohingya Working Group

[20] Ruma Paul, 2023, 'Rohingya say will not go home to Myanmar be stuck in camps, 7 May, 'https://www.reuters.com/world/asia-pacific/rohingya-say-they-wont-return-myanmar-be-stuck-camps-2023-05-06/.

occurred in the late 1970s and early 1990s.[21] Even though many of the Rohingya refugees in both incidents had been repatriated by the early 2000s, Bangladesh was still hosting several tens of thousands of Rohingyas in or outside camps.

The second type of forced migration is slower paced, sea-based and usually seasonal. As the displacement in Bangladesh becomes more protracted, Rohingya people have begun taking dangerous sea journeys attempting to find a better life. These have increased since the mid-2000s, and reached peaks in 2015 and 2022-23.[22] Rohingya migration by sea may be said to be forced or partially forced because Rohingya are in search of not only refuge but income and livelihoods, primarily but not exclusively in Malaysia. In desperation thousands of people engage smugglers and human traffickers, often as part of mixed migration flows.[23] Land journeys from Myanmar through Thailand and onto Malaysia have reportedly also been increasing since 2022, as the conflict in Myanmar becomes more protracted.

Such journeys can be fraught, with many falling prey to fraud, deception, exploitation, desertion and even murder before and during their travel.[24] And for many, these risks do not abate on arrival. Rohingya living in Malaysia and Thailand are often subject to immigration detention, and as a stateless community they are vulnerable to indefinite detention and exploitation. COVID-19 exacerbated xenophobia and scapegoating of migrants and refugees in some countries. Despite the risks, people will keep moving. A survey of 445 Rohingya women in Malaysia from 2021-22 found that 83% cited 'violence, insecurity and conflict' and 80% cited 'a lack of rights and freedom' as the main reasons they had left Myanmar or Bangladesh.[25]

In 2022 the world saw an unprecedented number of 3,500 Rohingyas take deadly sea crossings often in rickety boats, compared to 700 people in 2021.[26] In spite of the high risk, the factors that drive Rohingya refugees and IDPs and other Rohingyas in Bangladesh and Myanmar remained unchanged. Given the bleak outlook for the Rohingya in the near future, the number of Rohingya when the seas are calm after the monsoon of 2023 is likely to increase or at least remain the same.

Part 2: Opportunities going forward

The ultimate resolution to the crisis facing the Rohingya community is safe, dignified, durable and voluntary repatriation to Rakhine State when conditions are safe to do so. Numerous reports indicate that it is not currently the case. As discussed in an earlier paper, most countries in Southeast Asia have chosen to remain outside formal global frameworks affecting migration such as the 1951 Refugee

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[21] Kyaw, supra note 9.

[22] https://news.un.org/en/story/2023/01/1132517

[23] Freedom Collective, 2022, *Mapping Rohingya Movement Report;* Paing 2022 'Myanmar regime claims to have arrested a dozen people involved in trafficking of Rohingya' *Myanmar Now, https://myanmar-now.org/en/news/myanmar-regime-claims-to-have-arrested-a-dozen-people-involved-in-trafficking-of-rohingya/.*

[24] Mixed Migration Centre, 2022, 'Journeys to Indonesia for Rohingya refugees: Routes, risks, assistance and need', *MMC Asia 4Mi Snapshot – June 2022.*

[25] Mixed Migration Centre, 2022, 'Protection risks for Rohingya women and children: from departure country to arrival in Malaysia', *MMC Asia 4Mi Snapshot – March 2022.*

[26] UN News 2023 'Steep increase in deadly boat journeys reflects Rohingyas' desperation: UNHCR, 17 January, https://news.un.org/en/story/2023/01/1132517

Convention and the Conventions on Statelessness (although they are all party to the Global Compact on Refugees). While there is no comprehensive system to address these challenges as yet, in the absence of anything better, this role has been filled in part by ASEAN, and in part by the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process). The potential role of these two organisations will be discussed below, as well as a potential third way of developing a Regional Rohingya Support Platform.

What the Bali Process can do to respond

The Bali Process has the potential to make a more substantive contribution to both better short- term management and long-term resolution of the Rohingya refugee crisis. There are a number of tools at its disposal at the policy and practical level. The Bali Process is unique in that relevant source destination and transit countries are participants, unlike ASEAN.

The most immediate need is preserving life at sea. This requires some form of understanding between affected states on rescue at sea protocols, including landing arrangements, reception and temporary stay. Wider issues such as conditions for refugees in first asylum, anti-people smuggling initiatives and safe return could be considered.

The Consultation Mechanism, initiated in 2016, offers the opportunity to bring together most affected countries and relevant international organisations to discuss ways of responding better to the issues above. The Consultation Mechanism was first used in 2017. It met in relation to the Rohingya refugee crisis at that time, but the confidentiality of its deliberations makes evaluation of results difficult.

"Good offices" visits could play a useful part, as they have done before. Bali Ministers foreshadowed at their 2023 Adelaide meeting the use of the Consultation Mechanism would be considered in the current environment. With positive and imaginative leadership by Ministerial Co-chairs and officials the Bali Process at least offers the prospect of brokering solutions to some unresolved issues.

There is also scope for the Bali Process to look at opportunities to directly link up with ASEAN initiatives in relation to displacement from Myanmar.

Bali Process Ministers and officials can play a useful role by lending weight to the many proposals advanced by international organisations such the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the United Nations Office on Drugs and Crime (UNODC) seeking better results for displaced Rohingyas.

At the practical level, the Bali Process can possibly add value through the Task Force on Planning and Preparedness (TFPP) and also the Workshop process through practical tabletop exercises. The TFPP was set up in 2016 to enable regional agencies to work together to anticipate regional displacement and produce better responses, especially in relation issues such as safety of life at sea. However, for any work done by this group to be truly effective, there is a need for political coverage to provide authorisation for appropriate individual and collective responses by national agencies.

What ASEAN can do to respond

While there are a few tools available to ASEAN to address elements of the Rohingya crisis, these are in some ways more limited. As mentioned in Paper 1, ASEAN lacks a comprehensive framework or mechanism to deal with forced migration. In the absence of this, the following avenues may be worth considering.

In the initial aftermath of the 2017 violence in Rakhine State, the ASEAN Coordinating Centre on Humanitarian Assistance (AHA Centre) was tasked with carrying out a Preliminary Needs Assessment of the situation on the ground. However the mandate for the AHA Centre remains limited to natural disasters, not man-made emergencies, and it is also subject to a Governing Board of all ten Member States. Without changing this, the AHA Centre's ability to play a role in Myanmar is limited.[27]

Since the 2017 Rohingya exodus, the 2021 coup in Myanmar has dramatically changed the playing field. The agreement of the ASEAN Five Point Consensus just over two years ago was an unusual achievement for ASEAN, as was the appointment of a Special Envoy to rotate with the Chair, who as of 2023 has a dedicated team to support their work. Two years into its existence, there are ways to strengthen the Five Point Consensus, including: explicitly including Rohingya in the mandate of the Special Envoy; extending the term of the Special Envoy to three years with consistent resourcing; develop timelines and benchmarks to demonstrate compliance with Point 1 on civilian protection and cessation of violence, and increase engagement with all parties, in line with Point 2, particularly the National Unity Government (NUG), the Committee Representing Pyidaungsu Hluttaw (CRPH) and civil society.

The ASEAN Intergovernmental Commission on Human Rights (AICHR), established in 2009, has done good work at raising awareness and holding public forums and events on the topic, however it is limited in its ability to play a more active role as it is non-binding and lacks an enforcement mechanism. Similarly the ASEAN Institute for Peace and Reconciliation (ASEAN IPR) has a role to play in awareness-raising, inter-faith and inter-cultural dialogues and peace-building, however does not have the mandate to intervene explicitly on issues of Rohingya protection, particularly as its governing board includes all ten ASEAN Member States.

Within ASEAN there may be more hope in using mechanisms like the Convention against Trafficking in Persons, especially Women and Children (ACTIP) to address some elements of the Rohingya crisis. ACTIP and its related Bohol Work Plan is a legally binding convention that seeks to address trafficking in persons. Given so many Rohingya become victims of trafficking in the region, there could be real benefits to embedding this awareness in the new Bohol Work Plan 2.0, particularly provisions around prevention, and protection of victims.[28]

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[27] Some civil society groups have suggested that ASEAN discontinue the military junta's representation on the Governing Board of the AHA Centre, see Progressive Voice Myanmar, 2023, Civil Society Position Paper Reviewing and Reframing the Five Point Consensus, 5 May, https://progressivevoicemyanmar.org/2023/05/05/civil-society-position-paper-reviewing-and-reframing-the-aseans-five-point-consensus/

[28] Bohol TIP Work Plan 2017-2020.

While non-binding, another relevant framework is the 2019 ASEAN Declaration on the Rights of Children in the Context of Migration, and related Regional Plan of Action (RPA). These documents contain important provisions for education for all, ending child detention and access to health care regardless of visa status, that could potentially have huge benefits for Rohingya children among others. The RPA identifies priority indicators for the first five years of implementation (2021-25) and the first periodical review will take place by the end of 2023, so is an opportunity for ASEAN Member States to demonstrate progress against these indicators.

What are the other options?

For those who do not see a role for either ASEAN or the Bali Process in resolving these shared migration challenges, what then is the alternative?

One option is for ad hoc mini-lateral groupings of most affected states to come together to negotiate solutions. In the case of the Rohingya this would logically include at a minimum Bangladesh, Thailand, Indonesia, Malaysia and potentially Australia, India and other interested states. This type of grouping could choose to address a range of issues at once as part of a **Regional Rohingya Support Platform**

- ending immigration detention for Rohingya and providing alternative community-based arrangements;
- permitting access to livelihoods and education in situ, enabling Rohingya to contribute to local economies and communities;
- improving national-level access to protection through UN Refugee Status Determination, existing national vulnerability screening systems, and/or temporary humanitarian visas.
- negotiating formal resettlement, in the case of convention signatories Australia (and/or New Zealand and the US)
- agreements for coordinated search and rescue operations, safe disembarkation and processing on arrival
- advocating globally for additional international support to the response in Bangladesh at for a like the Global Refugee Forum.

The ad hoc nature of this type of action can be both a strength and a weakness. Its benefits are the flexibility it provides, outside the limitations of ASEAN and Bali Process actions as noted above. Its weakness is its lack of institutionalisation and predictability, meaning that at the resolution of this crisis, there is no guarantee future crises will be similarly resolved.

Discussion questions:
1. What is the potential for the above forums to address this challenge directly as a humanitarian or human rights issue?
2. Are there options available to ASEAN and the Bali Process not currently listed? If so, what?
3. How could a Regional Rohingya Support Platform work in practice?

Paper 3: Mental Health and Southeast Asia's Forced Migrants

Mental health has become more embedded in global health policies and practices in recent years due to awareness of the psychological toll of the COVID-19 pandemic. Indeed in many ways, the impacts of the pandemic demonstrated the importance of universal public health policies that care for the entire population: that "no one is safe until everyone is safe." Inherently this means including marginalised communities, which may include non-citizens.

The WHO, United Nations Office for the High Commissioner for Human Rights (UN OHCHR) and United Nations High Commissioner for Refugees (UNHCR) regard mental health for all as a fundamental human right.[29] The World Health Organisation (WHO) defines mental health as a state of wellbeing where individuals realise their potential, cope with life stresses, work productively and fruitfully, and make contributions to their communities.[30] The 74th World Health Assembly in 2021 endorsed the WHO's updated *Comprehensive Mental Health Action Plan (2013-2030)* which aims to:
- Strengthen effective leadership and governance;
- Provide comprehensive, integrated, and responsive services in *community settings*;
- Implement policies for promotion and prevention; and
- Strengthen information systems, evidence, and research.[31]

Now that the COVID-19 pandemic is widely considered as endemic, and countries are returning to "business-as-usual" public health approaches, there is a risk that mental health care will start to receive less attention, and the lessons we have learned as a global society during the pandemic may be lost. These risks are particularly acute for low and medium-income countries whose public health systems are less well resourced, or lack universal access to health services.

These risks impact all under-served and marginalised communities, but are especially consequential for forced migrants who, in many cases, are explicitly excluded from state-provided public health systems. This is despite the 72nd World Health Assembly in 2019 agreeing to the *Global Action Plan on Promoting the Health of Refugees and Migrants (2019-2023)*.[32]

Forced migrants face significantly higher rates of chronic and disabling emotional distress and cognitive dysfunctions than general populations given trauma, ongoing threats and daily stressors faced during pre-migration, transit, and/or post-migration stages.[33] Government policies often further add to these stressors through acts like border and travel restrictions and pushbacks at sea, indefinite immigration detention, prolonged family separation, and lack of access to livelihoods, education, health and social services.

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[29] UNGA Report of the 49th Session. of the Human Rights Council (28 Feb – 1 April 2022); WHO Comprehensive Mental Health Action Plan 2020-2030; UNHCR https://www.unhcr.org/mental-health-and-psychosocial-support

[30] WHO 2022 Mental health key facts, 17 June, https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response

[31] Emphasis added. WHO 2013 Comprehensive Mental Health Action Plan 2013-2030, https://www.who.int/publications/i/item/9789240031029

[32] WHO 2019, Annex 5: Global action plan on promoting the health of refugees and migrants, 2019-2023, A72/25 Rev. 1 – 23 May 2019, Seventy-Second World Health Assembly, Geneva.

[33] Liddell, B. et al, 2019, Neural correlates of posttraumatic stress disorder symptoms, trauma exposure, and postmigration stress in response to fear faces in resettled refugees. *Clinical Psychological Science*, 7(4), 811–825.

Recently, reports of the dire state of the mental health of forced migrants in our region are cause for serious concern, and there is not only a humanitarian imperative to act, but also significant risks to social and community wellbeing if we don't.

Global mental health initiatives

Recognising the limitations and constraints of mental health services in low and middle-income countries, the Inter-Agency Standing Committee in 2007 and, in subsequent years, the WHO, UNHCR, other UN agencies, government and non-government organisations (NGOs) have collaborated on a comprehensive approach. They have developed detailed methodologies to cater for mental health in low-resource settings and humanitarian emergency situations, including *Guidelines on Mental Health and Psychosocial Support (MHPSS) in Emergency Settings*.[34]

Definitions:

MHPSS involves public health officials, often working with international technical and financial support, establishing and coordinating 'technical working groups'. Technical working groups then engage with stakeholders to provide basic services and security, family and community engagement, focused non-specialist mental health support as well as specialised mental health services. They also perform advocacy and establish partnerships, secure resources and funding, build capacity through training and monitor and evaluate services.

Mental health **'Minimum Service Packages' (MSPs)** are inter-agency coordination tools, which countries can use to ensure that humanitarian coordinators (usually public health officials) are appointed, technical working groups are established and appropriate leads identified. MSPs intend to lead to better coordinated, more predictable, and more equitable responses to mental health needs.[35]

The WHO's **mental health Gap Action Programme (mhGAP)** plays an important complementary role by integrating mental health assessment, treatment and care into the public health care system and service providers, as well as building capacity and upscaling by training and transferring functions to non-specialists and community leaders. Case management and referral processes filter upwards only for those with chronic mental, neurological and substance use requiring specialist care.

In 2021, 48 countries were known to have formed MHPSS technical working groups, while 100 countries had embarked on mhGAP at varying levels of functionality and effectiveness. As international bodies, WHO and UNHCR are obligated to work in partnership with governments of member states and avoid unsustainable parallel systems that differentiate between national populations, regular migrants, and "irregular migrants" (ie. refugees and asylum seekers). This includes in refugee camps. Camps in ten countries have adopted services for mental, neurological and substance use (MNS) disorders, namely: Bangladesh, Colombia, Pakistan, Iraq, Jordan, Lebanon, Libya, South Sudan, Turkey, and Uganda.

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[34] https://interagencystandingcommittee.org/mental-health-and-psychosocial-support-emergency-settings. The guidelines are available in multiple languages on the website.

[35] https://mhpssmsp.org/en/all-activities

One example of emergency response is from the Netherlands, which has developed a programmed called Dutch Surge Support which has a pool of MHPSS experts who it can deploy to assist relief efforts for short periods of time (a few weeks to several months) in a crisis situation. The program is commissioned by the Dutch Ministry of Foreign Affairs and responds to requests from international humanitarian organisations.

Southeast Asia and mental health

All countries in the Southeast Asian region have enacted standalone or integrated mental health policies and plans, and in 2022 WHO member countries in Southeast Asia adopted the Paro Declaration committing to universal access to people-centred mental health care and services.[36] Southeast Asian countries are also no strangers to MHPSS and mhGAP in the context of humanitarian emergencies. After the 2004 Indian Ocean tsunami, Indonesia's Ministry of Health partnered with the International Medical Corps (IMC) to offer mental health and psychosocial support services in Aceh Province, and again after the 2018 earthquake and tsunami in Sulawesi. Typhoon Haiyan, which devastated the Eastern Visayas in 2013 led the Philippines' Department of Health, WHO and the IMC to dramatically scale up the provision of mental health services and training of staff. The Philippines experience is considered by the WHO to be a shining example of a "building back better" case.[37]

The COVID-19 pandemic motivated the governments of Cambodia, Laos, Malaysia, Thailand, and Vietnam to establish MHPSS policies and mhGAP training for primary care providers and in community settings. In 2022, the WHO, UNICEF, and UNESCO, in partnership with the Burnet Institute, embarked on a research initiative to strengthen MHPSS systems in Thailand, Malaysia, Papua New Guinea and the Philippines for children and adolescents.[38]

There is also scope for further development at the regional level. Mental health is one of the health priorities under the ASEAN Health Agenda,[39] and Australia as an ASEAN Dialogue Partner has held an ASEAN-Australia Mental Health Experts videoconference and a Youth Dialogue, following the pandemic.[40]

Southeast Asia and mental health for non-citizens

While these above policies have the potential to benefit many in ASEAN, there is a gap in support for refugees and asylum seekers. Typically in ASEAN these communities receive support only on humanitarian grounds, often at the urging of international agencies and local humanitarian groups. More systemic policies and practices have been relatively discretionary. In countries where there are

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[36]https://www.who.int/southeastasia/news/detail/06-09-2022-who-south-east-asia-region-commits-to-universal-access-to-people-centered-mental-health-care-and-services

[37] https://www.who.int/news-room/fact-sheets/detail/mental-health-in-emergencies; and Budosan, B. et al 2016, 'Up scaling mental health and psychosocial services in a disaster context: Lessons learnt from the Philippine Region hardest hit by typhoon Haiyan', *International Journal of Medicine. and Medical Sciences,*

[38]https://www.unicef.org/eap/press-releases/strengthening-mental-health-and-psychosocial-support-systems-and-services-mhpss

[39] https://asean.org/wp-content/uploads/2016/12/55.-December-2016-ASEAN-Mental-Health-System.pdf

[40] https://www.foreignminister.gov.au/minister/marise-payne/media-release/enhancing-asean-australia-partnership

persistent challenges in rolling-out public health - including mental health - services to their own populations, it can be difficult to advocate for the inclusion of other groups.

In the absence of nation-wide services, many effective NGOs have stepped in and work to provide mental health support and counselling to refugees and forced migrants in the region, including AJAR (Asia Justice and Rights), and AAPP (Assistance Association for Political Prisoners) in Thailand.

Nevertheless, Thailand, Indonesia and Malaysia are known to offer some access to public health and MHPSS services to forced migrants, as expanded upon below.

Thailand represents the longest and possibly the best example of access to mental health services for refugees and asylum seekers (eg. in Mae La in the early 2010s). It has allowed the establishment of specialised mental health clinics in refugee camps under the Ministry of Social Development and Human Security, supported by UNHCR, the International Organization for Migration (IOM), and other NGOs. It provides training and capacity-building opportunities for mental health professionals and community leaders to work with forced migrants. Community-based approaches and engagement are particularly progressive features, promoting ownership and empowerment, and better utilisation of mental health services.

In **Indonesia**, the Ministry of Health coordinates with the Ministry of Social Affairs and its National Disaster Management Agency to coordinate and implement mental health services for forced migrants in collaboration with UNHCR, IOM, IMC, the Jesuit Refugee Service, Save the Children Fund, Mercy Corps and Caritas Indonesia. UNHCR has supported the establishment of community-based mental health services, including counselling and psychosocial support, for forced migrants in Jakarta, Bogor, and Makassar. The IMC has helped to train healthcare providers on mental health assessment and management, as well as provide individual and group counselling, psychosocial support, and other mental health services in Jakarta. Humanitarian emergency and some MHPSS services have/are also been established in Aceh.

Malaysia's Ministry of Health has also undertaken key MHPSS initiatives for refugees and asylum seekers in collaboration with UNHCR and IMC. These include establishing some mental health clinics services that conduct mental health assessments, counselling, and psychosocial support for forced migrants who have experienced trauma and have mental health conditions. There are also indications that the Ministry of Health conducts training, capacity building and community-based and sensitive interventions, as well as establishing referral pathways and coordination mechanisms and carrying out some advocacy efforts. However a significant barrier to access remains, as Ministry of Health Circular 10/2001 requires healthcare providers to report "undocumented migrants" they encounter to police or immigration authorities.[41]

In general, access to MHPSS services among refugee populations in Southeast Asia is not sufficiently documented, and knowledge is incomplete or unknown. In camp settings and during emergency response there appear to be more examples of promising practice than in long-term displaced populations. In addition to resource and personnel constraints, there can also be challenges of

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[41] Medicins Sans Frontiers, 2022, https://www.msf.org/lack-maternal-healthcare-puts-refugee-women-risk-malaysia

insufficient coordination and collaboration, lack of knowledge of languages, cultural differences, and perceptions about mental health illnesses. Awareness, stigma and discrimination are also common in forced migrant situations.

Three avenues for action

Given the complex and inter-related challenges related to mental health support to forced migrants, it would seem critical for there to be action along three main ways: (1) greater advocacy and awareness-raising, (2) in-depth data-gathering, research, monitoring and evaluation of the coordination and implementation of activities and (3) greater collective regional action proposed milestones and targets to 2030.

1. Greater advocacy and awareness raising:

For policy makers and and health providers:
1. It is in the strategic, political, and economic interests of countries to ensure the physical and mental wellbeing of their residents, irrespective of their legal status.
2. Mental self-efficacy and resilience are key to managing the expression of negative behaviours and actions that can impact societal and community functioning. As the COVID-19 pandemic demonstrated, the non-inclusion of forced migrants, who frequently interact with others in their local communities, is ineffective at achieving broader public health outcomes.
3. Ensuring the physical and mental health of forced migrants not only contributes to their own wellbeing, but helps with social cohesion and productivity in situ, and better prepares them for either resettlement or repatriation (*enlightened humanitarianism*).
4. Community-based approaches to MHPSS and mhGAP mean that much of the burden on states is reduced. UN agencies and NGOs have shown themselves to be willing and highly capable partners in providing technical expertise, funding and personnel for capacity building where needed, and often have better access to and relationships with communities in need.
5. Strengthening these community partnerships ensures greater coverage, and that access to MHPSS services will be enabled for all citizens and migrants alike. Indeed, work among forced migrants provides valuable clinical lessons for preparedness in national, regional, and international humanitarian emergencies (*building back better*).

For forced migrant communities:
6. Improving mental health literacy among forced migrant communities is also very important and would lead to greater understanding of common mental health issues, including early identification, and also contribute to removing stigma which can prevent people seeking help.
7. Further, awareness-raising around what resources are available and how to access them would also benefit forced migrant communities, as this lack of awareness can be a major barrier to access.

2. In-depth research into monitoring and evaluation.

A key objective of the WHO's *Comprehensive Mental Health Action Plan (2013-2030)* is to strengthen mental health information systems, evidence, and research. MHPSS and mhGAP also emphasise national data-gathering, monitoring, evaluation, and research in order to inform policy design and

training, garner technical and financial support as well as knowledge exchange. In this regard, three areas are crucially important.

1. MHPSS processes require high degrees of coordination among diverse groups of stakeholders in multiple sectors to maintain case management and referral integrity. For this reason information management and access to relevant data is critical, as is transparency and accountability. This transparency is equally if not more important where MHPSS is being carried out in detention settings, which are known to in themselves contribute to mental harm,[42] and often lack oversight or reporting mechanisms.

2. MHPSS services are designed to be delivered in community settings and mental health assessments, interventions and post-clinical care need to be culturally adapted to the communities being served, and their unique experiences. Attention needs to be paid to overcoming cultural attitudes, stigma and discrimination, and also the specific experiences of refugee and forced migrant groups, including the effects of immigration detention and family separation.

3. Care should also be taken to ensure those delivering services are not negatively impacted by the work, particularly if they come from the same community they are serving.

4. Data gathered from monitoring when studied and analysed, can be crucial in shortening the learning curves of other professionals and workers. Data should be shared on training platforms, such as MHPSS.net, a global platform that provides training resources, best practices and networking opportunities for practitioners working in the area.

3. Collective regional action

- Much can be done at the national level in our region to strengthen mental health policy and practice to include refugees and forced migrants.
- Countries that are more advanced on their journey to provide effective mental health support can share their experience with other countries as part of peer-learning, information-sharing, training and potentially funding if appropriate.
- The region could consider establishing a standing partner mechanism for mental health of forced migrants in emergencies.

Proposed milestones and targets to 2030
- **By end-2023 or early-2024**, initial consultation and workshops are held at the regional level on aspects of MHPSS most relevant to refugees and forced migrants, to then be organised on regular (annual/biannual) basis with relevant international and local organisations (WHO, UNHCR, IMC, IOM, and specialised NGOs).
- **By 2025:** Southeast Asian countries work to put in place MHPSS minimum service packages (MSPs) in their country, and remove barriers to access for forced migrants.
- **By 2030,** having had some experience, ASEAN countries, together with external dialogue partners, consider establishing a MHPSS standing partner mechanism (like the Dutch Surge Support program mentioned above) to cater to address mental health needs of populations in crises and post-crises in Asia Pacific countries.

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[42] WHO 2022 'Addressing the health challenges in immigration detention, and alternatives to detention'

Conclusion

The mental health needs in Southeast Asian countries are high but, at the same time, access to services are constrained and limited. MHPSS and mhGAP can make essential contributions to address this situation for all those residing within them, including forced migrants. Although countries in the region are not unfamiliar with MHPSS and mhGAP, the roll-out of services is still in its early stages and require a great deal more work before they are accessible to those that need them.

MHPSS and mhGAP have been designed to account for the needs and constraints of low- and middle-income countries. ASEAN countries are at different stages of implementing the WHO's Comprehensive Mental Health Action Plan and will need to develop momentum, in partnership with international, national, and subnational stakeholders.

This paper sees the need for greater advocacy and awareness-raising on mental health issues in general, and under-served segments and forced migrants in particular. It further emphasises the urgency of research into monitoring and evaluation, collective regional action and proposes milestones and targets to 2030. Specifically, it proposes that all ASEAN countries target 2025 for putting in place MHPSS minimum service packages. In 2030, they could consider establishing, with external partners, a MHPSS standing partner mechanism for humanitarian emergencies in the region.